

TOWN OF KITTERY, MAINE
PLANNING BOARD MEETING
Council Chambers

APPROVED
October 9, 2014

Meeting called to order at 6:00 p.m.

Board Members Present: Tom Emerson, Karen Kalmar, Mark Alesse, Deborah Driscoll Davis

Members absent: Ann Grinnell

Staff: Chris DiMatteo, Interim Planner

Pledge of Allegiance

Minutes: September 25, 2014

Ms. Kalmar moved to approve the minutes as amended

Mr. Alesse seconded

Motion carried unanimously by all members present

PUBLIC COMMENT: There was no public comment.

ITEM 1 – Brave Boat Conservation at Sawyer Lane – Cluster Subdivision —Preliminary and Final Plan Review Action: Hold a public hearing, review and grant or deny preliminary and final plan approval. Owner and Applicant Jonathon & Kathleen Watts are requesting consideration of their plans for a 4-lot cluster subdivision at 143 Brave Boat Harbor Road, Tax Map 63, Lot 19, Residential Rural Zone, with a portion in the Shoreland Overlay Zone. Agents are Ken Markley, Easterly Surveying, Inc.

Ken Markley briefly summarized the project:

- 11.75 acre parcel; 8.89 acre open space; project area is 3 acres;
- would like a Board decision on requested dimensional modifications and approval of special exception use and grant preliminary approval.

Mr. Emerson noted there is a quorum of four Board members and any approvals would require four affirmative votes. Mr. Markley asked that if they felt there was not a like vote during the process, they would like the opportunity to postpone until there is a full Board present.

Public Hearing opened at 6:07 p.m.

Daniel Moran/Gabrielle Burke, Brave Boat Harbor Road: Supports the cluster concept, but is not in favor of this project. Asks the Board to consider the proposed addition of 3 homes in a tight area, directly behind existing homes; there should be a limit to the extent of modifications allowed in cluster developments.

Public Hearing closed at 6:10 p.m.

Ken Markley:

- Clustering requires a buffer; applicant proposes a 40-foot buffer along the abutters property with a 20-foot no-cut, no-disturb natural buffer, and fencing.
- Requests lots 2-4 have a front setback modification of 20-feet to allow moving structures further away from protected areas and abutters. Without modification, structure envelope would be closer to abutter properties.

Response to staff review:

- Plan sets: S-2 replaced with existing conditions plan; S-1 has all details and are now included (distributed to Board);
- Aerial photos do not adequately illustrate the tree line, however a 40-foot setback, with fencing and a 20-foot vegetated, natural buffer is now included on the plans;
- Restriction on removing vegetated areas will be included in the homeowners association documents. Because of the small size of the parcel, a 20% clearance for structures and driveways would not provide enough open area around the structures for safety and use of the parcel by the homeowners.

Additionally, there is already a 100-foot buffer in place. Discussion followed regarding the size of the building envelope and de-vegetation areas.

- Tree removal and clearing restrictions, per code, will be included in the homeowner documents.
- Plan changes: Staff recommendations and notes requested will be included on project plans.
- The referenced survey will be included as an existing conditions plan.
- Plan note 8 included as requested.
- Plan note 11 included as requested.
- Plan note 12 included as requested, except for lot 1 which has an existing system, not designed for a pre-treatment system. If that system fails, it could be included in the pre-treatment system.
- Dimensional Standards: Lots 2-4 retain the 20 foot side and rear standard; only existing lot 1 does not. Other calculations are correct. Requests allowance for greater de-vegetation areas due to small lot (2-4) sizes.
- Note 14 reflects no-mow maintenance.
- Note 19: Vegetative buffer/cedar fencing/landscape materials included.
- Note 15: Addresses reference to C-1 and C-2 plans.
- Note 16 included as requested.
- Notes 2 and 3 from Sheet C-1 included as Notes 17 and 18 on subdivision plan.
- Maintenance of open space will be addressed in homeowner documents.

Scott Anderson, Attorney: will include recommendations for changes and inclusions in homeowner documents.

Mr. Alesse: Developer must provide capital for maintenance until homeowner association is operational. Who will maintain vegetated buffers in stormwater areas and provide for plowing if some lots remain vacant?

Ms. Kalmar: Requested Mr. Anderson confirm adherence with code requirements for homeowner associations (16.8.11.7).

Ms. Davis: Include in lot 1 deed that a pre-treatment sewage system be required for lot 1 if replacement is needed in the future.

Mr. Anderson: These issues will be addressed.

Mr. Alesse: Has consideration been given to selling lot 2?

John Watts: This was discussed with abutters, but a monetary agreement could not be reached.

Mr. Anderson: Special Exception Use criteria: Normally this is not applicable to residential use, but are reviewed for impact. Standard subdivision requires a special exception use review, whereas cluster development does not. Because this cluster development is in the shoreland zone, the special exception use review is required, specifically in regard to environmental impact. The plan is consistent with shoreland zone development requirements, does not negatively impact the environment and reduces the stormwater runoff from what currently exists. The density proposed is less than what currently exists along Brave Boat Harbor Road, while meeting the standards of cluster development. The addition of three new residences in an existing residential neighborhood does not negatively impact the area as would a commercial development, where special exception use criteria standards would apply.

Ms. Kalmar: Finds the argument is without fault and the development meets cluster development objectives, and the proposed use would meet the special exception use criteria standards.

Mr. DiMatteo: Met with police and public works regarding plowing of road and driveways for emergency access. It should be made clearer that this road will not be accepted as a public street.

Suggested discussing with Town Attorney for specific language in this regard.

Ms. Davis: Is there a snow storage area?

Mr. Watts: Will be providing snow plowing services. Snow will be moved to the right along the ROW and will be removed if needed.

Ms. Kalmar: Will frozen snow banks increase water runoff?

Mr. Watts: Does not anticipate this to be a problem with the stormwater runoff design; additional compost will be added which holds 20-times its weight in water (Note 7).

Ms. Kalmar moved to approve the Special Exception Criteria
Ms. Davis seconded
Motion carried by all members present

Ms. Davis moved to waive the dimensional standards
Mr. Alesse seconded
Ms. Kalmar: Concerned with the proposed de-vegetation request as it is not allowed as it is a dimensional standard.
Mr. Anderson: The cluster provisions allow this modification and flexibility.
Mr. DiMatteo: Local shoreland zoning is approved by the state and modification of de-vegetation standard appears outside of the Board's authority.
Mr. Anderson: This modification can be reviewed further in an attempt to satisfy the minimum standard.

Ms. Davis withdrew her motion:
Mr. Alesse seconded
Motion carried by all members present

Ms. Davis moved to approve the modification requests, excluding the request for modification of de-vegetated areas.
Ms. Kalmar seconded
Motion carried by all members present

Ms. Kalmar moved to grant Preliminary Plan approval
Mr. Alesse seconded
Motion carried by all members present

Mr. Emerson: Requests language from the Town Attorney regarding retaining the ROW as a private road in perpetuity.
The Town Attorney will also review the homeowners documents, and financial guarantees must be provided prior to final review.

BREAK

ITEM 2 – Board Member Items / Discussion:

A. Debrief on Joint TC/PB 10/6 workshop
Members discussed edits to amendments discussed at the joint workshop.
Board members asked for an Executive Summary. Drafts will be provided at the next meeting for Planning Board review. Discussion followed regarding Holding Tanks. Mr. DiMatteo will follow up with design engineer, Barney Baker.
Discussion regarding workshop with Council to discuss minimum acreage, addressing Comprehensive Plan.
Ms. Kalmar: The Action List needs to be prioritized so the Board has a direction.
Ms. Davis: Board members should personally prioritize the list for discussion at 10/23 meeting.
Site walk minutes needed for Betty Welch Road by November 13 meeting.

B. Other - Board Officers

Ms. Kalmar nominated Debbie Driscoll Davis as interim Vice Chair
Mr. Alesse seconded
Motion carried by all members present

Mr. Alesse nominated Karen Kalmar as interim Secretary
Ms. Davis seconded
Motion carried by all members present

Mr. Emerson nominated Ann Grinnell as Planning Board representative to the Kittery Port Authority
Ms. Davis seconded
Motion carried by all members present

Mr. Alesse asked if property owners, but not residents, can serve on the Planning Board.
Ms. Kalmar: You have to be a registered voter in Kittery.

Mr. Emerson: Build Maine Conference sponsored by the Maine Municipal Association on November 6 in Lewiston.

Growth Smart conference October 21.

Ms. Kalmar: It would be helpful if the Board provides staff their policy regarding applications and what the Board requires, i.e. site plans and public hearings and combining preliminary and final plan approval at one meeting. The final plan should be reviewed for compliance by the full Board prior to signature by the Chairman, unless conditions or changes are minor.
Discussion followed regarding discretionary decisions by the Board regarding site walks and public hearings. There is potential to combine preliminary and final review in one meeting, following a public hearing. At this time, there is no separate final plan application for subdivisions.

ITEM 3 – Town Planner Items

- Regarding site walk minutes: Minutes can be shared with the applicant prior to Board approval of the minutes.
- Planning Board meeting for 10/23/14:
Signage workshop from 6:00-7:00; regular meeting will begin at 7:00. Any specific concerns the Board has for the workshop's guest speaker (Kenneth Peskin) should be shared ahead of time.
- Summarized amendments for consideration at 10/23/14 meeting.

NEW BUSINESS

ITEM 4 – 84 Pepperrell LLC -- Shoreland Development Plan Review Action: Accept or deny plan application and schedule site walk and/or public hearing. Owner 84 Pepperrell LLC and applicant Jonathan MacDougal are requesting approval of their plans to reconstruct and expand an existing non-conforming building located at 84 Pepperrell Rd., Tax Map 27, Lot 51, in the Kittery Point Village and Shoreland Overlay zones.

Beth Seegers: 84 Pepperrell known as Frisbee house. Fence is proposed for safety.

Mr. MacDougal: Proposal summary:

- Continue existing fence between properties for safety;
- Install a guardrail along seawall for safety and visibility;
- Add a patio or deck to existing building;
- Install a privacy fence, similar to property line fence, less than 8 feet high.
- Impervious surface significantly less than the 70% allowed.

Mr. DiMatteo: Plan needs to reflect 72 sf maximum surface of the proposed addition.
The majority of the parcel is in the B-L zone, including the structure to be expanded.

Board members concurred a site walk is not needed.

Ms. Kalmar moved to accept the application and schedule to a Public Hearing

Ms. Driscoll seconded

Motion carried by all members present

ITEM 5 – 62 Pepperrell Cove LLC -- Shoreland Development Plan Review Action: Accept or deny plan application and schedule site walk and/or public hearing. Owner Pepperrell Cove LLC and Applicant Michael McCuddy is requesting approval of their plans to expand an existing non-conforming building located at 62 Pepperrell Rd., Tax Map 18, Lot 46, in the Kittery Point Village and Shoreland Overlay zones.

Michael McCuddy: Summarized proposal to lift the roof area, increasing the volume of the structure and a small increase in area. Impervious area will not be further impacted.

Discussion followed regarding volume expansion creating increase in square footage.

Board requested photos of the existing home to compare with proposed improvements and that staff work with the applicant to prepare a final site plan for recording.

Board members concurred a site walk is not needed as long as additional materials are provided at the next review.

Ms. Davis moved to accept the application and schedule to a Public Hearing

Ms. Kalmar seconded

Motion carried by all members present

ITEM 6 – Deuell Revocable Trust -- Shoreland Development Plan Review Action: Accept or deny plan application and schedule site walk and/or public hearing. Owner Deuell Revocable Trust and Applicant Peter Whitman are requesting approval of their plans to expand an existing non-conforming building located at 70 Chauncey Creek Rd., Tax Map 45, Lot 70, in the Kittery Point Village and Shoreland Overlay zones.

Peter Whitman, Gerrish Island: Requested the Board waive the site walk and public hearing and approve the application. Plan summary:

- Replace existing house and existing overboard septic system;
- Requesting waiver of plan recordation and site plan.
- Volume confirmed by staff; height of building will be within maximum height allowed of 35 feet.
- Summarized the findings of fact noting no impact on shore cover, proposal is not more non-conforming, volume and area increases are within code allowance.

Mr. DiMatteo: Since packets were distributed, an email from an abutter was received requesting a public hearing.

Mr. Whitman: The abutter requesting a public hearing is present and could address their concerns. Other abutters had no concerns. Proposed recording the findings of fact rather than recording a site plan.

Ms. Kalmar: Septic easement.

Mr. Whitman: He spoke with the Holzer's who were concerned with a septic system near their property. The leach field will be moved further away from the Holzer property requiring fill extensions within the ROW. If this cannot be accomplished via an easement, they will be grandfathered with the existing overboard system.

Discussion followed regarding locations of proposed leach field and septic system. Area of leach field in ROW is approximately 10 sf.

Mr. Emerson: Concerned about retention of an overboard discharge system.

Rich Holzer, 72 Chauncey Creek Road: Have only recently seen plans. Proposed plan increases the size of the house mass within 8 feet of their property line; suggested increase be done on opposite side to preserve their light and privacy, where there's more room.

Mr. DiMatteo: Changing the footprint from what is existing on a narrow area will impact existing setbacks.

Mr. Whitman: The foundation exists where they wish to expand, but does not exist on the opposite side of the existing structure and would not be allowed. They will minimize any light impact on the adjacent properties. This is a tight lot with limited area. The Holzer's home is 14 feet from the shared property line. The proposal is in conformance with the code.

Mr. Holzer: A plan and site walk will benefit everybody.

Mr. Emerson: Why the rush?

Mr. Whitman: The septic system needs to be installed within 6 months of the purchase of the property and coordinate with the demolition of the existing structure.

Mr. DiMatteo: A shoreland development plan needs to be recorded as part of plan review.

Ms. Kalmar: There is a level of public confidence, and the Board must review applications in the same manner for all applicants. An abutter has a legal right to voice their concerns at a public hearing.

Mr. Whitman: The only change with the footprint is the addition of an 8x12-foot entry to the front of the new structure, away from the shore line.

Ms. Davis: Concerned with the septic system issue.

Mr. Whitman: Would be agreeable to a site walk and a public hearing.

Mr. DiMatteo: Title 16.7.3.5.6.A needs to be reviewed.

Ms. Kalmar moved to accept the application and schedule a site walk and public hearing,

Mr. Alesse seconded

Motion carried by all members present

A site walk was scheduled for Thursday, October 30 at 8:00 a.m.

A site plan is needed prior to final approval.

Ms. Kalmar moved to adjourn

Mr. Alesse seconded

Motion carried by all members present

The Kittery Planning Board meeting of October 9, 2014 adjourned at 9:10 p.m.

Submitted by Jan Fisk, Recorder, October 16, 2014